

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

1430 Q St. Investors LLC,

Plaintiff,

v.

Marcus War,

Defendants.

No. 2:21-cv-01293-KJM-AC

ORDER

Defendant Marcus War removed this action from the Superior Court of the State of California for Sacramento County. Rem. Not., ECF No. 1. Defendant also filed a motion for leave to proceed in forma pauperis (IFP). Pet., ECF No. 2. Defendant's motion to proceed IFP is **granted** but having reviewed defendant's notice of removal and found no subject matter jurisdiction over this action, the court sua sponte **remands** the action to state court.

A party may be granted leave to proceed IFP after filing an affidavit demonstrating an inability to pay the filing fee. 28 U.S.C. § 1915(a)(1); see *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). In his application, defendant states his take-home salary is approximately \$900 a week, he owns no real estate property, stock, or other asset beyond his weekly income, and his bills are nearly equal to his monthly income. The court finds he has demonstrated an inability to pay the filing fee.

1 However, a complaint filed by a person proceeding IFP is subject to a mandatory and sua
2 sponte review and dismissal by the court if the complaint is frivolous or fails to state a claim upon
3 which relief may be granted, among other conditions. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v.*
4 *Stahl*, 254 F.3d 845, 845 (9th Cir. 2001). Additionally, a federal court has an independent duty to
5 assess whether federal subject matter jurisdiction exists. *United Investors Life Ins. Co. v. Waddell*
6 & *Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). “If at any time before final judgment it appears
7 that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.
8 § 1447(c).

9 There are two primary bases for federal subject matter jurisdiction: (1) federal question
10 jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332.
11 District courts have federal question jurisdiction over “all civil actions arising under the
12 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Under the longstanding
13 well-pleaded complaint rule, a suit “arises under” federal law “only when a federal question is
14 presented on the face of plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*,
15 482 U.S. 386, 392 (1987). To invoke federal question jurisdiction, a complaint must establish
16 “either that (1) federal law creates the cause of action or that (2) plaintiff’s right to relief
17 necessarily depends on resolution of a substantial question of federal law.” *Williston Basin*
18 *Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold & Easement*, 524 F.3d 1090, 1100
19 (9th Cir. 2008) (citation omitted). Federal question jurisdiction cannot rest upon an actual or
20 anticipated defense or counterclaim. *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).
21 Alternatively, a federal court has diversity jurisdiction over an action involving citizens of
22 different states where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. “The
23 burden of establishing federal jurisdiction is upon the party seeking removal, and the removal
24 statute is strictly construed against removal jurisdiction.” *Emrich v. Touche Ross & Co.*, 846 F.2d
25 1190, 1195 (9th Cir. 1988) (internal citation omitted).

26 The exact allegations are unclear from the face of the petition here, but it appears the
27 complaint attempts to set forth an unlawful detainer claim, which sounds clearly and exclusively
28 in state law. Compl. at 1, ECF No. 1 (complaint is entitled “Complaint-Unlawful Detainer”);

1 Civil Cover Sheet at 1–2 (selecting “rent lease and ejectment” box under nature of suit),
2 ECF No. 1-1. On the civil cover sheet, defendant cites a prolix list of statutes but nowhere in his
3 petition does he provide a reasonable explanation of how all of those statutes support his claim.
4 Civil Cover Sheet at 1. He also attaches as an exhibit a publication that appears to come from the
5 Centers for Disease Control and Prevention. Rem. Not. Ex. B, ECF No. 1. Defendant thus does
6 not carry his burden and therefore the court must find it lacks federal-question jurisdiction.
7 *See Caterpillar*, 482 U.S. at 392 (“The presence or absence of federal-question jurisdiction is
8 governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists
9 only when a federal question is presented on the face of plaintiff’s properly pleaded complaint.”);
10 *see also PNC Bank Nat’l Ass’n v. Ahluwalia*, No. 15-01264, 2015 WL 3866892, at *4 (N.D. Cal.
11 June 22, 2015) (“Unlawful-detainer claims do not arise under federal law and, without more, the
12 court lacks federal-question jurisdiction.”) (collecting cases).

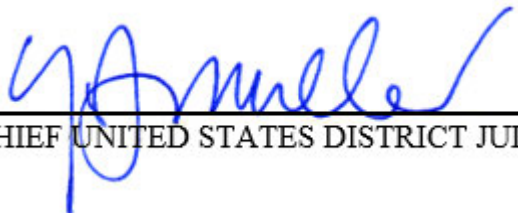
13 Further, as a California citizen, defendant cannot remove this case on the basis of diversity
14 jurisdiction. Civil Cover Sheet at 1 (defendant is a “citizen of this state”); *see also* 28 U.S.C.
15 § 1441(b)(2) (stating that an action may not be removed on the basis of diversity “if any of the
16 parties in interest properly joined and served as defendants is a citizen of the State in which such
17 action is brought”); *Spencer v. U.S. Dist. Ct.*, 393 F.3d 867, 870 (9th Cir. 2004) (“It is thus clear
18 that the presence of a local defendant at the time removal is sought bars removal.”).

19 Defendant has not adequately established a basis for the court’s subject matter jurisdiction
20 and the court must therefore remand the case. *See* 28 U.S.C. § 1447(c).

21 This order resolves ECF Nos. 1 & 2. This case is **remanded**.

22 IT IS SO ORDERED.

23 DATED: October 14, 2021.

24 
25 CHIEF UNITED STATES DISTRICT JUDGE